

**Section 1. Actions that May be Appealed (National School Lunch Program). (7 CFR § 210.18(q))**

- (1) A School Food Authority (“SFA”) participating in the National School Lunch Program may appeal the denial of all or a part of the Claim for Reimbursement or withholding payment arising from administrative or follow-up review activity conducted by the Division of School and Community Nutrition (the “division”).

**Section 2. Notice of Action. (7 CFR § 210.18(j))**

- (1) The “division” must provide written Notice of Action to the SFA’s Superintendent (or equivalent in a non-public school authority) or authorized representative.
- (2) The Notice of Action shall detail the grounds upon which the denial of all or part of the Claim for Reimbursement or withholding of payment is based.
- (3) The Notice of Action shall also include a statement indicating that the SFA may appeal the denial of all or part of a Claim for Reimbursement or the withholding of payment and identify whether the SFA must direct that appeal to either the “division” or Food Nutrition Service (“FNS”) .
- (4) The “division” shall notify the SFA of the appeals procedures specified by 7 CFR 210.18(q) for appeals of the division action, but for appeals of FNS findings, the division shall provide the SFA or authorized representative with a copy of the 7 CFR 210.29(d)(3) regulation.
- (5) The Notice of Action shall be sent by certified mail, return receipt requested.
- (6) The Notice of Action shall state that the appeal shall be made within the timeframe set forth in Section 4 of this regulation and the appeal shall meet the requirements set forth in Section 3 of this regulation.

**Section 3. Filing An Appeal. (7 CFR § 210.18(q))**

- (1) SFA’s Superintendent (or equivalent in a non-public school authority) or authorized representative aggrieved by an adverse action of SCN may appeal the adverse action by filing a timely request for an appeal. The request shall be filed with the Office of Legal, Legislative, and Communication Services, Department of Education, 300 Sower Blvd. 5<sup>th</sup> Floor, Frankfort, Kentucky 40601.
- (2) SFA’s Superintendent (or equivalent in a non-public school authority) or authorized representative wanting a hearing, the SFA’s Superintendent (or equivalent in a non-public school authority) or authorized representative must specifically request it in the request for appeal; otherwise, the administrative review official will consider the appeal based on written information only.

#### **Section 4. Appeal Timelines. (7 CFR § 210.18(q))**

- (1) The request for appeal shall be postmarked or received by the division prior to midnight of the fifteenth calendar day after receipt of the notice of adverse action. If the 15th day falls on a Saturday, Sunday, or federal legal holiday, the request shall be timely if it is postmarked or received the next day which is not a Saturday, Sunday, or federal legal holiday.
- (2) The division shall acknowledge receipt of the request for an appeal within ten (10) days of its receipt of the request.
- (3) Any information on which the division's action was based shall be available for inspection by SFA's Superintendent (or equivalent in a non-public school authority).

#### **Section 5. Appeal Procedures. (7 CFR § 210.18(q))**

- (1) The division shall forward any request for appeal to the Director of Administrative Hearings Branch, Office of the Attorney General for the Commonwealth of Kentucky to designate an administrative review officer. The request for appeal shall be accompanied by a copy of the notice of adverse action sent by the division.
- (2) During the appeal process, SFA's Superintendent (or equivalent in a non-public school authority) or authorized representative shall:
  - (a) Self-represent;
  - (b) Be represented by legal counsel; or
  - (c) Be represented by another person.
- (3) The division's action shall remain in effect during the appeal process. However, participating SFA may continue to operate the Program during an appeal, and if the appeal results in overturning the division's decision, reimbursement shall be paid for eligible meals served during the appeal process.
- (4) SFA's Superintendent (or equivalent in a non-public school authority) or authorized representative may refute the findings contained in the Notice of Action in person or by submitting written documentation to the administrative review official. In order to be considered, written documentation must be submitted to the administrative review official not later than 30 days after receipt of the Notice of Action.
- (5) If a hearing is requested:
  - (a) The administrative hearing procedures of KRS Chapter 13B shall apply, except as provided in subsection (9) below.
  - (b) SFA's Superintendent (or equivalent in a non-public school authority) or authorized representative, and the division shall be provided a ten (10) day advance notice of the time and place of the hearing;

- (c) If the SFA or authorized representative fails to appear at the scheduled hearing, the right to a personal appearance before the designated hearing officer shall be waived unless the designated hearing officer agrees to reschedule the hearing; and
  - (d) A representative of SCN shall be allowed to attend the hearing to respond to the testimony of the SFA and to answer questions posed by the designated hearing officer.
- (6) The designated administrative review official shall make a determination based solely on the information provided by the state agency, SFA's Superintendent (or equivalent in a non-public school authority) or authorized representative based on federal and state laws, administrative regulations, and policies and procedures governing the program.
- (7) The designated administrative review official shall inform SCN, the SFA or authorized representative the outcome of the appeal within sixty (60) days of SCN's receipt of the request for an appeal.
- (8) The determination by the administrative review official is the final administrative determination to be afforded to the appellant.
- (9) The final order of the administrative review official shall be subject to judicial review in accordance with Kentucky Revised Statutes Chapter 13B.140, except that:
  - (a) All appeals of a final order shall be filed in Franklin Circuit Court.